



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

[REDACTED]
Lakia L.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service,
Agency.

Appeal No. 2022003209

Agency No. 4G-330-0160-22

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated April 20, 2022, dismissing her complaint alleging unlawful employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier, Q-01, at the Agency's WPB - Palms West Branch in Royal Palm Beach, Florida.

On April 1, 2022, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the basis of race and in reprisal for prior protected EEO activity. The Agency characterized her claims as alleging discrimination when:

1. on December 14, 2021, she received notice that she had been given a disability retirement, effective October 26, 2021; and
2. on dates not specified, her leave was not coded as workers' compensation.

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

The Agency dismissed claims 1 and 2 for untimely EEO Counselor contact, pursuant to 29 C.F.R. § 1614.107(a)(2), finding that Complainant did not contact an EEO Counselor until more than 45 days after these alleged events. The Agency also dismissed claim 2 for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1), finding the claim was an impermissible collateral attack on the proceedings of another forum.

The instant appeal followed.

ANALYSIS AND FINDINGS

Timeliness: Claim 1

EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. EEOC Regulation 29 C.F.R. § 1614.107(a)(2) states that the Agency shall dismiss a complaint or a portion of a complaint that fails to comply with the applicable time limits contained in §1614.105, unless the Agency extends the time limits in accordance with § 1614.604(c).

The Commission has adopted a “reasonable suspicion” standard (as opposed to a “supportive facts” standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Dep’t of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

Regarding claim 1, the Agency found that Complainant’s EEO Counselor contact was untimely because she alleged that she received notice of her disability retirement on December 14, 2021, and she initially contacted the EEO Office on January 31, 2022, which is more than 45 days later. However, in her formal complaint, Complainant indicated that she was informed of her disability retirement on or before December 16, 2022. On appeal, she asserts that her claim is not untimely because she did not receive notice of her disability retirement “until about December 16, 2021.” In support of her contention, she submits copies of a letter from the Agency dated December 9, 2021, indicating that the Agency forwarded her retirement case to a processing center and describing the administrative process through the final adjudication of her application for retirement; a letter from the Agency dated October 26, 2021, congratulating her on her retirement; and a USPS Priority Mail envelope indicating a delivery from the Agency to Complainant, with an expected delivery day of December 17, 2021, which would be within 45 days of her contacting the EEO Office. The Commission has held that where there is an issue of timeliness, the agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness. Williams v. Department of Defense, EEOC Request No. 05920506 (August 25, 1992). Here, the Agency has not explained how it determined December 14, 2021, was the relevant date from which Complainant’s time to contact the EEO Office began to run.

Consequently, we find the record is insufficient to establish when Complainant received notice of her disability retirement and dismissal for untimely EEO Counselor contact was, therefore, improper. Thus, we find the Agency improperly dismissed claim 1 as untimely.

Failure to State a Claim: Claim 2

Regarding claim 2, Complainant alleges the Agency improperly coded her leave related to her workers' compensation claim. An employee cannot use the EEO complaint process to lodge a collateral attack on another adjudicatory proceeding. See Wills v. Dep't of Def., EEOC Request No. 05970596 (July 30, 1998); Kleinman v. U.S. Postal Serv., EEOC Request No. 05940585 (Sept. 22, 1994); Lingad v. U.S. Postal Serv., EEOC Request No. 05930106 (June 25, 1993). A claim that can be characterized as a collateral attack, by definition, involves a challenge to another forum's adjudicatory proceeding, such as the grievance process, the workers' compensation process, or state or federal litigation. See Fisher v. Dep't of Def., EEOC Request No. 05931059 (July 15, 1994). Although the coding of Complainant's leave involves Agency management action, that action is governed by duties under the U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP) regulations. Attempting to raise these issues here is an inappropriate use of the EEO process to lodge a collateral attack on the OWCP process. The proper forum for Complainant to have raised such matters is with the OWCP. Thus, dismissal of this claim was proper.²

CONCLUSION

The Agency's final decision is REVERSED in part and AFFIRMED in part. The dismissal of claim 1 is REVERSED and REMANDED to the Agency for further processing in accordance with the Order below. The dismissal of claim 2 is AFFIRMED.

ORDER (E0618)

The Agency is ordered to process claim 1 in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's

² Because we affirm the Agency's decision regarding this claim for this reason, we need not address the Agency's alternative grounds for dismissal.

request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.**

A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).


COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

October 19, 2022
Date